

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

EMANUEL COLEMAN,

Plaintiff,

:

Case No. 3:06-cv-143

-vs-

Chief Magistrate Judge Michael R. Merz

:

MONTGOMERY COUNTY BOARD
OF COUNTY COMMISSIONERS,

Defendant.

DECISION AND ORDER DENYING REQUEST FOR JURY TRIAL

This case is before the Court on Defendant's Motion to Strike Purported Jury Demand (Doc. No. 15).

When this case came on for preliminary pretrial conference, the Court indicated it was unaware of any jury demand by either party, although Plaintiff believed he had made a jury demand. The case was therefore set for a bench trial (i.e., trial to the Court sitting without a jury)(See Scheduling Order, Doc. No. 13).

Thereafter, to prove that he had demanded a jury, Plaintiff furnished the Court with a copy of the Civil Cover Sheet he prepared at the time he filed the case (See Doc. No. 14). The Civil Cover Sheet does indeed have the jury demand box checked. However, there is no jury demand made in the Complaint itself nor was any jury demand served on the other parties to the case until the Civil Cover Sheet was filed with the Court and served by virtue of its presence in the Electronic Case Filing system. That services was of course a number of months after the Complaint was filed.

Fed. R. Civ. P. 38(b) requires that a jury demand be served on the parties in the case, which is often done by a plaintiff by including it in the Complaint. Fed. R. Civ. P. 38(d) provides that failure to

demand a jury as required by that Rule constitutes a waiver of any right to trial by jury. The Sixth Circuit has expressly held that checking the jury demand box on the Civil Cover Sheet is not an adequate compliance with Rule 38. *Cochran v. Birkel*, 651 F. 2d 1219 (6th Cir. 1981).

Accordingly, the Motion to Strike Purported Jury Demand is granted. This case will proceed to bench trial as set in the Scheduling Order.

October 16, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge